

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
American Broadcasting Educational Foundation)	NAL No. x18ed0004
)	
Permittee, KYCM(FM))	
Bastrop, Texas)	
Facility ID # 85291)	

FORFEITURE ORDER

Adopted: March 10, 2000

Released: March 13, 2000

By the Chief, Enforcement Bureau:

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) against American Broadcasting Educational Foundation ("ABEF"). We conclude that ABEF willfully and repeatedly violated Section 73.1125 of the Commission's rules¹ by not maintaining adequate staffing at the main studio for station KYCM(FM), Bastrop, Texas. We further conclude that ABEF willfully and repeatedly violated Section 73.3527 of the Commission's rules² by not maintaining its local public inspection file for KYCM(FM) at the station's main studio. However, after considering all of the facts and circumstances, we have determined that a forfeiture for the latter rule violation is unnecessary.

BACKGROUND

2. Following disposition of a petition to deny an application to assign the permit for KYCM(FM) (File No. BAPED-981222GE, granted June 29, 1999), the Mass Media Bureau investigated allegations that ABEF had violated the Commission's main studio and public file rules. The investigation revealed that, beginning on June 16, 1998, and continuing until November 5, 1998, ABEF had three management-level employees who were supposed to rotate office duty at the main studio; however, they only reported to the studio on an intermittent basis. Further, although station employees would be present at the station for periods up to eight hours at various times during this period, there were also lengthy periods of time when the main studio was left unstaffed. Finally, it appeared that from November 5, 1998, to January 1999, the main studio was left completely unstaffed. Beginning in January 1999, ABEF employed a station manager and another individual, both of whom were available weekdays between 8 a.m. and 5 p.m. With respect to the public file, ABEF kept the file at the Bastrop City Hall until January 1999 at which time it moved the file to the station's main studio.

¹ 47 C.F.R. § 73.1125.

² 47 C.F.R. § 73.3527.

3. After considering the circumstances, the Chief, Mass Media Bureau, on October 29, 1999, issued a Notice of Apparent Liability (“NAL”) for Forfeiture.³ The NAL concluded that ABEF apparently violated the staffing component of the main studio rules⁴ from June 16, 1998, until January 1999, because ABEF had left the main studio unattended at various times during this period. The NAL proposed a forfeiture of seven thousand dollars (\$7,000) for the main studio rule violation, the base amount specified in the Commission’s Forfeiture Policy Statement.⁵ In addition, the NAL determined that ABEF had apparently violated the public file rule⁶ by failing to maintain the KYCM(FM) public file at the station’s main studio. Considering that ABEF had always maintained a public file and that it was unavailable for a relatively short period of time,⁷ the NAL proposed a forfeiture of three thousand dollars (\$3,000), rather than the ten thousand dollar base amount for a public file rule violation specified in the Commission’s Forfeiture Policy Statement.⁸

4. ABEF’s November 29, 1999 response does not contest the facts. Rather, ABEF contends that the total amount of the forfeiture is inappropriate. ABEF argues that the forfeiture should be reduced because it has no history of prior violations. Focusing on the public file rule violation, ABEF argues that the violation should be viewed as “relatively minor.” In this regard, ABEF observes that its file was located in compliance with the rules prior to their being changed and that the only individual who alleged a lack of access to the file was someone “who repeatedly petitioned against ABEF’s applications, ... a one-man vengeance squad [whose] interest ... had little to do with seeking out information with respect to KYCM, but everything to do with attempting to get this station in trouble....” Finally, ABEF notes that KYCM(FM) is a noncommercial station and that, until recently, it depended on listener support to remain solvent. ABEF admits that it has now entered into a time brokerage agreement but claims, without further explanation or support, that it has no money to pay a forfeiture.

DISCUSSION

5. In determining the amount of a forfeiture, we are required to take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (the “Act”).⁹ Those factors include the nature, circumstances, extent and gravity of the

³ American Broadcasting Educational Foundation, 14 FCC Rcd 17889 (Mass Media Bureau 1999).

⁴ Main Studio and Program Origination Rules, 2 FCC Rcd 3215, 3217-18 (1988), *clarified*, 3 FCC Rcd 5024, 5026 (1988). *See also* Jones Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁵ In the Matter of the Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17115 (1997), *recon. denied*, FCC 99-407, released December 28, 1999.

⁶ Effective October 30, 1998, Section 73.3527(b) of the rules, 47 C.F.R. § 73.3527(b), prescribes in pertinent part that every permittee of a noncommercial FM station must maintain its local public inspection file at the station’s main studio.

⁷ There was a four-day period in December 1998 when ABEF had removed the file from the local city hall.

⁸ *See* note 5, *supra*, 12 FCC Rcd at 17113.

⁹ 47 U.S.C. § 503(b)(2)(D).

violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. *See also* Section 1.80(b)(4) of the Commission's rules.¹⁰ After considering all of the circumstances, we believe the ends of justice will be served by imposing the forfeiture for the main studio rule violation but canceling the forfeiture for the public file rule violation.

6. With respect to the main studio violation, we note that we recently imposed a forfeiture of \$7,000 for willful and repeated failures to maintain an adequate staff at the main studio for WQOP(AM), Atlantic Beach, Florida.¹¹ Those failures included periods when the main studio was left unattended. Such was the case here. That being said, we believe that consideration of all pertinent circumstances, including ABEF's history, warrants cancellation of the forfeiture for the public file rule violation. In this regard, we acknowledge that, prior to October 30, 1998, and subsequent to January 1, 1999, ABEF has maintained KYCM(FM)'s public file at a location that complies with the Commission's rules. We further acknowledge that, at most, the KYCM(FM) public file was unavailable for no more than four days. Finally, we note that ABEF has contracted to sell KYCM(FM) and intends to withdraw from broadcasting (File No. BAPED-981222GE, granted June 29, 1999). Accordingly, after considering all of the circumstances, including the imposition of a \$7,000 forfeiture for the main studio rule violation, we conclude that a forfeiture for the public file rule violation is unnecessary.

7. However, we do not believe that ABEF's status as a noncommercial, listener-supported entity, standing alone, provides a basis for further reducing the forfeiture. Here, ABEF's bare assertion that it has no financial resources does not support a reduction of the forfeiture because ABEF has not provided any evidence upon which we can reasonably assess its ability to pay. *See Forfeiture Policy Statement*, *supra* note 5, 12 FCC Rcd at 17106-07.

ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act¹², and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's rules¹³, American Broadcasting Educational Foundation IS LIABLE FOR A MONETARY FORFEITURE in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating the provisions of Section 73.1125 of the Commission's rules,¹⁴ which require maintenance of adequate staffing at a broadcast station's main studio.

9. IT IS FURTHER ORDERED THAT, the forfeiture proposed for American Broadcasting Educational Foundation's violation of Section 73.3527 of the Commission's rules¹⁵ IS CANCELLED.

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ *See Queen of Peace Radio, Inc.*, DA 00-141 (EB), released January 31, 2000.

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴ 47 C.F.R. § 73.1125.

¹⁵ 47 C.F.R. § 73.3527(b).

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules¹⁶ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL No. referenced above (x18ed0004). Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

11. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to American Broadcasting Educational Foundation at 8103 Brodie Lane, Suite 3, Austin, Texas 78475 and to its counsel, Lee Peltzman, Esq. at Shainis & Peltzman, Chartered, 1901 L Street, N.W., Suite 290, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁶ 47 C.F.R. § 1.80.

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.